VIRGINIA:

In the Court of Appeals of Virginia on Thursday the 15th day of June, 1995.

Wilfred Oscar Hawes, Appellant,

against Record No. 1083-94-3
Circuit Court Nos. CR94000077-00 and CR94000078-00

Commonwealth of Virginia, Appellee.

From the Circuit Court of Rockbridge County

Before Judge Coleman, Retired Judges Covington and Gates*

This petition for appeal is denied for the following reasons. In reviewing a trial court's denial of a Motion to Suppress, "the burden is upon [the appellant] to show that this ruling, when the evidence is considered most favorably to the Commonwealth, constituted reversible error." Fore v. Commonwealth, 220 Va. 1007, 1010 265 S.E.2d 729, 731, cert. denied, 449 U.S. 1017 (1980).

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*Retired Judges Kenneth M. Covington and Ernest P. Gates took part in the consideration of this case by designation pursuant to the Code Section 17-116.01.

> A police officer may stop a motor vehicle, without probable cause, for investigatory purposes if he or she possesses a reasonable and articulable suspicion "that a motorist [is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise] subject to seizure for violation of law."

Bulatko v. Commonwealth, 16 Va. App. 135, 136-37, 428 S.E.2d 306, 307 (1993) (citations omitted). Code Section 46.2-1013 provides that "[e]very motor vehicle . . . shall carry at the rear a red light . . . . " Code Section 46.2-1014 provides that brake lights "shall automatically exhibit a red or amber light . . . ."

The officer testified that when appellant came to a stop at the traffic control light, the broken taillight exhibited "a bright, white light" that was "very distracting to drivers behind him." The officer stopped appellant's car to notify him of the broken taillight.

From this evidence, the police officer could have reasonably believed that the broken taillight created a driving hazard and violated Virginia motor vehicle requirements by not exhibiting a red or amber light. Therefore, the evidence supports the trial court's finding that the officer had a reasonable and articulable basis to stop the vehicle

and that the stopping for that purpose was not pretextual. Accordingly, the trial judge did not err in denying appellant's motion to suppress.

A Copy,

Teste:

Richard R. James,
Clerk
By: /s/ Marty K.P. Ring
Deputy Clerk

VIRGINIA:

In the Court of Appeals of Virginia on Wednesday the 9th day of August, 1995.

Wilfred Oscar Hawes, Appellant,

against Record No. 1083-94-3
Circuit Court Nos. CR94000077-00 and CR94000078-00

Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing

Before Judge Coleman, Retired Judges Covington and Gates*

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 15th day of June, 1995 and grant a rehearing thereof, the said petition is denied.

A Copy,

Teste:

Richard R. James,
Clerk
By: /s/ Deborah S. T. Uitvlucht
Deputy Clerk

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*Retired Judges Kenneth M. Covington and Ernest P. Gates took part in the consideration of this case by designation pursuant to the Code Section 17-116.01.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 28th day of November, 1995.

Wilfred Oscar Hawes, Appellant,

against Record No. 951613
Court of Appeals
No. 1083-94-3

Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court refuses the petition for appeal.

Justice Koontz took no part in the consideration of this case.

A Copy,

Teste,

David B. Beach, Clerk

By: /s/ Jennifer G. Earle
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 19th day of January, 1996.

Wilfred Oscar Hawes, Appellant,

against Record No. 951613
Court of Appeals
No. 1083-94-3

Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 28th day of November 1995 and grant a rehearing thereof, the prayer of the said petition is denied.

Justice Koontz took no part in the consideration of this case.

A Copy,

Teste,

/s/ David B. Beach
Clerk

VIRGINIA:

IN THE CIRCUIT COURT LEXINGTON-ROCKBRIDGE COUNTY

COMMONWEALTH OF VIRGINIA

v.

WILFRED OSCAR HAWES

MOTION TO SUPPRESS

Defendant, WILFRED OSCAR HAWES, by and through his attorney, Ross S. Haine, pursuant to Sections 19.2-54 and 19.2-60 of the Code of Virginia, respectfully requests this Honorable Court to suppress all evidence, oral and physical, including any statements made by the Defendant, whether prior to or subsequent to his arrest, and any property seized as a result of the arrest, detention or interrogation of the Defendant. The Defendant further respectfully requests that this Court order any statement or evidence improperly obtained be excluded from any trial of charges brought against the Defendant as a result of the seizure of such evidence and, further, that such improperly obtained evidence not be used for any investigative purpose, including obtaining derivative evidence. As grounds for this motion the Defendant, by counsel, respectfully represents as follows:

The evidence mentioned above was illegally seized without a warrant in violation of Defendant's rights guaranteed by the Fourth, Sixth and Fourteenth Amendments of the United States Constitution and Article I Sections 1, 8, 10, 11 and 17 of the Constitution of the Commonwealth of Virginia.

Defendant further states he has standing to contest the legality of said seizure.

A general statement of the facts on which this motion is based is as follows:

1. On January 1, 1994, New Year's Day, at approximately 7:50 p.m., Officer J. E. Painter of the Rockbridge County Sheriff's Department stopped Defendant's vehicle because he observed that a piece was broken out of the right taillight lens cover.

2. Defendant was driving a 1993 Nissan pickup with North Carolina license plates.

3. Officer Painter stated that the only reason he stopped Defendant was because he observed the piece broken out of the plastic lens cover.

4. The lights under the cover worked properly.

5. After stopping and detaining Defendant, a member of the Rockbridge County Sheriff's Office searched the

vehicle and found a partially full champagne bottle and beer bottles in the truck. As a result of these findings, and after conducting field sobriety tests and an intoxilizer breath test, Office Painter charged Defendant with DUI.

6. Officer Painter also charged Defendant with defective equipment, a violation of Section 46.2-1003, Code of Virginia, for the taillight lens.

7. Officer Painter stated that he doesn't always pull people over for defective equipment, that he follows no guidelines in determining who he pulls over and who he doesn't pull over, that "sometimes I do, sometimes I don't."

8. In order to warrant Officer Painter stopping Defendant in his vehicle, Officer Painter must have had some reasonable suspicion of criminal activity.

9. The piece broken out of Defendant's plastic taillight lens cover does not constitute defective equipment. Defendant's lights functioned properly. Virginia's statutory equipment requirements at Chapter 10, Article 3, headed "Lights and Turn Signals," Section 46.2-1010, Code of Virginia, headed "Equipment Required", requires only that "the lights shall at all times be capable of being lighted...". Section 46.2-1013, Code of Virginia, headed "Taillights", requires that "every motor vehicle.....shall carry at the rear a red light plainly visible in clear weather

from a distance of 500 feet to the rear of such vehicle." Defendant's vehicle complied with these statutory requirements.

10. Since Defendant's vehicle complied with Virginia's statutory equipment requirements, Officer Painter had no reasonable suspicion to justify initially stopping and detaining Defendant. Defendant is not required to have perfect equipment. See, e.g., Logan v. Commonwealth, No. 2342-92-2 (Va. App., March 29, 1994). (Defendant's passenger vent window appeared broken: "....observation of a broken window, without more, does not establish a reasonable suspicion that a violation of the law had occurred or was occurring".) Commonwealth v. Caldwell, No. 1803-93-3 (Va. App., February 4, 1994). (Officer's observation of Defendant's car "tipping" as it passed through a curve on a bridge and by the officer's vehicle is not enough to constitute reasonable suspicion).

11. Even if the taillight lens could constitute defective equipment, Defendant's stop and detention by Officer Painter was an illegal pretext stop. Officer Painter only stops some of those vehicles he observes with defective equipment, and exercises completely unguided discretion in deciding whom to stop. The taillight lens in this case was merely a pretext for Officer Painter to stop and investigate Defendant, who was driving a pickup with out of state tags at night on a holiday. The automobile

exception to the warrant requirement does not apply when the detention is merely a pretext concealing an investigatory police motive. Servis v. Commonwealth, 6 Va. 507, 371 S.E. 2d 156 (1988); Reese v. Commonwealth, 220 Va. 1035, 265 S.E. 2d 156 (1988).

WHEREFORE, Defendant respectfully requests this Honorable Court grant this Motion to Suppress.

Respectfully Submitted,
WILFRED OSCAR HAWES

By: \s\ Ross S. Haine,

Ross S. Haine
HAINE AND MURTAGH
205 S. Main Street
P.O. Box 1258
Lexington, Virginia 24450
(703) 464-6306

CERTIFICATE

I hereby certify that a true copy of the foregoing Motion to Suppress was mailed to Eric Sisler, Commonwealth's Attorney, 6 East Washington Street, Lexington, Virginia, 24450, this 6th day of May, 1994.

\s\ Ross S. Haine